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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

GABRIEL E. SOLIS,

Defendant and Appellant.

A147082

**(Contra Costa County
Super. Ct. No. 11573807)**

The trial court determined Gabriel E. Solis violated probation by battering his then fiancée (Pen. Code, § 273.5, subd. (a)).¹ The court reinstated and extended Solis's probation.

Solis appeals. Having reviewed the record as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), we find no arguable appellate issue and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2012, Solis plead no contest to possessing a controlled substance without a prescription (Bus. & Prof. Code, § 4060) and the court suspended imposition of sentence and placed Solis on probation for two years. The court later modified and extended Solis's probation until December 2015. In September 2015, the prosecution filed a petition to revoke probation alleging Solis battered his then fiancée (§ 273.5, subd. (a)) in August 2015. At a contested probation revocation hearing, the parties presented the following evidence:

¹ Unless noted, all further statutory references are to the Penal Code.

Prosecution Evidence

Angelina S. (Angelina) met Solis in 2013 and they began dating. In 2015, they were engaged and lived together. Angelina experiences episodes causing mood shifts. These episodes, however, do not cause her to lose her balance and fall, or to suddenly blackout.

On August 25, 2015, Angelina and Solis had an argument. As they argued, Angelina tried to leave the apartment because she felt agitated and wanted to go for a walk to “cool . . . off.” Angelina walked onto the porch, but Solis picked her up and carried her back inside. Angelina was suddenly on the ground in a fetal position. Solis grabbed Angelina’s throat. Angelina felt pressure on her neck and “blacked out for a minute[.]” Solis threatened: ““You are going to die, bitch.”” Angelina yelled for help and tried — unsuccessfully — to get away. Solis eventually released Angelina, but took away her cell phone.

A few hours later, Angelina went to Solis’s mother’s home. Solis’s mother saw scratch marks on Angelina’s neck and tried to calm her down. Angelina also had red marks and bruising on her neck.² Angelina told a police officer Solis choked and threatened her. Later, however, Angelina wrote defense counsel a letter claiming Solis held her down so she would not hurt herself.

Defense Evidence

On the day of the incident, Solis said Angelina was “behaving irregularly . . . nagging at [him]” and pacing back and forth. Solis was concerned about Angelina leaving the apartment on her own because they lived in a “bad neighborhood” and it was late in the evening. Solis “grabbed” Angelina, brought her inside the apartment, and then tripped, causing them to fall. Solis held Angelina down by her collar area. According to Solis, Angelina was “having a temper tantrum” and swinging her arms erratically, so he had to restrain her. Solis denied choking Angelina or threatening her; he claimed he held her down to prevent her from hurting herself as she had in the past.

² The court admitted photographs of Angelina’s neck into evidence.

The Court's Order

At the conclusion of the hearing, the court determined Solis violated probation by battering Angelina (§ 273.5, subd. (a)). The court rejected Solis's testimony "that he was merely trying to . . . restrain [Angelina]," explaining the court did not "see restraining someone who is on the ground . . . with your hands on the neck[.]" The court noted: "the language associated, the 'Die, bitch,' coupled with these photographs, implies to me that [Solis], . . . for at least a few moments . . . was intent on harming this woman." The court reinstated and extended Solis's probation and ordered him to, among other things, serve 90 days in jail.

DISCUSSION

Solis appealed. His appointed counsel filed an opening brief raising no issues pursuant to *Wende, supra*, 25 Cal.3d 436. Counsel informed Solis he had the right to file a supplemental brief on his own behalf but he declined to do so. We have reviewed the record pursuant to *Wende* and find no reasonably arguable appellate issue. The court did not err by admitting photographs of Angelina. (*People v. Hart* (1999) 20 Cal.4th 546, 617.) Solis was ably represented by counsel at the probation revocation hearing. (*People v. Beaudrie* (1983) 147 Cal.App.3d 686, 694.) The court properly determined Solis violated probation. (*Ibid.*)

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.